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ip@williamsmullen.com
tbergert@williamsmullen.com
drobertson@williamsmullen.com



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/630,532
Filing Date: July 30, 2003
Appellant(s): MORRIS, DANIEL R.

Thomas F. Bergert
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 27, 2011 appealing from the Office action mailed August 03, 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Application No. 10/308,268, a commonly owned application having a similar disclosure. An appeal brief was filed January 27, 2011.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-31 are rejected and pending in the application.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

US 2002/0107703

Feinberg et al.

08-2002

MERS® Integration Handbook, Vol. II, Version 11.0, May 19, 2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feinberg et al. (US 2002/0107703) in view of MERS® Integration Handbook (Vol. II, Version 11.0, May 19, 2002).

As per Claims 1 and 10, Feinberg discloses a method and system for managing lien releases, comprising the steps of:

providing computer access to lien records for a plurality of lien-record jurisdictions, each of said lien records including a respective lien holder entry ([0005] via once the service provider receives payment, it is necessary to file a satisfaction or release of the lien. A release or satisfaction is prepared with the recording number and other certain information required by law or rule, again often on a specialized form which may differ from jurisdiction to jurisdiction. The release is submitted to the proper agency and recorded.);

identifying, using a programmed computer, at least one lien where the note underlying the at least one lien has been satisfied ([0016] via receiving notice that payment has been received and preparing a release of a lien from the patient and insurance data previously transmitted and stored when the lien was originally prepared); searching lien records and determining from the lien records whether the at least one lien is due for release as a result of the note having been satisfied ([0016] via retrieving

from the database (i.e. searching) patient and insurance data in regards to a lien that was filed and preparing a release based on the guidelines form each jurisdiction previously stored on the database. Examiner asserts that it is implied that if the guidelines cannot be met then it is determined that a release cannot be issued.);

identifying whether at least one lien holder is subject to an action for non-release of a real-property-related lien ([0016] via retrieving from the database (i.e. searching) patient and insurance data in regards to a lien that was filed and preparing a release based on the guidelines form each jurisdiction previously stored on the database. Examiner asserts that it is implied that if the guidelines cannot be met then a release is not issued.); and

repeating steps (b) and (c) at given time intervals ([0016] discloses the steps of determining a release of a lien to be repeated each time a notice of proper payment is received).

Feinberg discloses the invention being applicable to various types of liens such as commercial and residential construction (i.e. real property) ([0017]). However, Feinberg fails to explicitly disclose presenting a report of a subset of said lien records.

MERS® Integration Handbook teaches several different reports which present a report of a subset of liens due for release and those subject to action to penalty for non-release (MERS® Integration Handbook, Appendix D, Page 104 via Assignment and Lien Releases Report and Page 108 via Payoff Reject Report).

Therefore, from the teaching of MERS® Integration Handbook, it would have been obvious to one of ordinary skill in the art at the time the invention was made to

modify the method and system for automated lien management of Feinberg to include presenting a report of a subset of said lien records as taught by MERS® Integration Handbook in order to aid in tracking liens by presenting a report of a subset of liens which are due for release or subject to penalty, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

As per Claims 2 and 11, Feinberg discloses the claimed invention as applied to Claims 1 and 10, above. However, Feinberg fails to explicitly disclose presenting a report upon receiving a request.

MERS® Integration Handbook teaches several different reports wherein a user may request and receive a report via the MERS® OnLine browser application (Page 12).

Therefore, from the teaching of MERS® Integration Handbook, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method and system for automated lien management of Feinberg to include presenting a report upon receiving a request as taught by MERS® Integration Handbook in order to aid in tracking liens by presenting a report of a subset of liens which are due for release or subject to penalty, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

As per Claims 3 and 12, Feinberg discloses the claimed invention as applied to Claims 1 and 10, above. However, Feinberg fails to explicitly disclose presenting a report operable upon detection of a change in said identified liens or lien holders.

MERS® Integration Handbook teaches several different reports wherein a report may be presented upon detection of a change in said identified liens or lien holders (Page 12, via daily-activity based reports and confirmation reports are generated. A user (whom may have detected a change in a lien) may request and receive a report via the MERS® OnLine browser application.).

Therefore, from the teaching of MERS® Integration Handbook, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method and system for automated lien management of Feinberg to include presenting a report operable upon detection of a change in said identified liens or lien holders as taught by MERS® Integration Handbook in order to aid in tracking liens by presenting a report of a subset of liens which are due for release or subject to penalty, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

As per Claims 4 and 13, Feinberg discloses the claimed invention as applied to Claims 1 and 10, above. However, Feinberg fails to explicitly disclose identifying release liens.

MERS® Integration Handbook teaches several different reports wherein a report is generated that identify all release liens (MERS® Integration Handbook, Appendix D, Page 104, via Assignment and Lien Release Report).

Therefore, from the teaching of MERS® Integration Handbook, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method and system for automated lien management of Feinberg to include identifying release liens as taught by MERS® Integration Handbook in order to aid in tracking liens by presenting a report of a subset of liens which are due for release or subject to penalty, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

As per Claims 5 and 14, Feinberg discloses a database of jurisdictional-specific rules regarding lien releases ([0016] via the release is prepared according to guidelines from each jurisdiction previously stored on the database).

As per Claims 6 and 15, Feinberg discloses providing a database of documents associated with said rules ([0003-0004] discloses preparing liens in accordance with certain information required by law or rule, often on a specialized form wherein the lien documents are archived and stored).

As per Claims 7 and 16, Feinberg discloses providing real-time access to said plurality of jurisdictions at substantially the same time ([0016] via providing access to guidelines from each jurisdiction that are stored in a database).

As per Claims 8 and 17, Feinberg discloses said given intervals are established by individual request ([0015-0016] discloses the release process being performed at given intervals based on a client transmitting an e-mail message to the data processing

server giving notice that the client has received proper payment for a given patient's services).

As per Claims 9 and 18, Feinberg discloses the computer is a network-accessible server ([0011-0012] via a plurality of clients on remote nodes are linked to the data-processing server, by the Internet).

As per Claims 19 and 21, Feinberg discloses a method for managing lien releases, comprising the steps of:

receiving, by a programmed computer, transactional information related to at least one lien ([0011-0012] discloses the client preparing an electronic data file of information that is from the client via the Internet to the data processing server);

providing, by the programmed computer, at least one electronic document based on said transactional information ([0013] via creating a medical lien from the data on the database wherein the content and format of the document are specified by the guidelines stored in the database);

determining whether a lien record associated with said at least one lien can be tracked electronically ([0006] discloses tracking liens. Examiner asserts a determination of a lien being capable of tracking is performed by actually tracking the lien.) and whether the at least one lien is due for release as a result of a note underlying the at least one lien having been satisfied ([0016] via receiving notice that payment has been received and preparing a release of a lien from the patient and insurance data previously transmitted and stored when the lien was originally prepared);

searching, using the programmed computer, for said lien record; and receiving, by the programmed computer, search results associated with said lien record ([0016] via retrieving from the database (i.e. searching) patient and insurance data in regards to a lien that was filed and preparing a release based on the guidelines form each jurisdiction previously stored on the database.).

However, Feinberg et al. fails to explicitly disclose presenting a report.

MERS® Integration Handbook teaches several different reports which present a report identifying a release status associated with said lien record (MERS® Integration Handbook, Appendix D, Page 104 via Assignment and Lien Releases Report).

Therefore, from the teaching of MERS® Integration Handbook, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method and system for automated lien management of Feinberg to include presenting a report as taught by MERS® Integration Handbook in order to aid in tracking liens by presenting a report of a subset of liens which are due for release or subject to penalty, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

As per Claims 20 and 22, Feinberg et al. discloses initiating communications to determine whether said lien has been released to at least one of: a payoff lender, a settlement agent, a courthouse, a third party title insurance underwriter ([0016] via providing communication in the form of a copy of the release to the liable party and patient).

As per Claims 23 and 30, Feinberg et al. discloses a method and system for brokering lien release information, comprising the steps of:

providing a network-accessible server ([0011-0012] via a plurality of clients on remote nodes are linked to the data-processing server, by the Internet) having access to lien record information for a plurality of lien record-keeping jurisdictions ([0012-0013] discloses accessing guidelines on how to properly file a lien in each given jurisdiction), said server further having access to a database of electronic documents associated with at least one lien status ([0004] discloses providing access to archived lien documents. Examiner asserts that the type of document being stored and accessed is considered non-functional descriptive material. The method of stored and accessing a document would be performed the same regardless of the type of document.);

providing at least one user interface capable of accessing said server for inputting identification and transaction information pertaining to at least one lien ([0011-0012] via the client providing patient's identification information, patient's insurance information, type and location of the accident, etc...);

providing at least one user interface capable of accessing said server for requesting at least one search in connection with at least one lien ([0012; 0016] via retrieving from the database (i.e. searching) patient and insurance data in regards to a lien that was filed and preparing a release based on the guidelines form each jurisdiction previously stored on the database.).

Feinberg discloses the invention being applicable to various types of liens such as commercial and residential construction (i.e. real property) ([0017]). However,

Feinberg et al. fails to explicitly disclose identifying a lien status based on transaction information and jurisdiction information associated with a lien; requesting a determination as to whether the at least one lien has been released; displaying status information related to a lien; and requesting the generation of at least one document.

MERS® Integration Handbook teaches several different reports with the concept of identifying a lien status based on transaction information and jurisdiction information associated with a lien (MERS® Integration Handbook, Appendix D, Page 104, via Assignment and Lien Release Report); requesting a determination as to whether the at least one lien has been released (Page 12, discloses a user may request and receive a report via the MERS® OnLine browser application, wherein a report Lien Release Report may be generated (MERS® Integration Handbook, Appendix D, Page 104)); displaying status information related to a lien MERS® Integration Handbook, Appendix D, Page 104, via "Assignment and Lien Releases Not Quality Reviewed Report" and "Assignment and Lien Releases Report"); and requesting the generation of at least one document in connection with at least one lien (Page 12, discloses a user may request and receive a report via the MERS® OnLine browser application.).

Therefore, from the teaching of MERS® Integration Handbook, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method and system for automated lien management of Feinberg to include identifying a lien status based on transaction information and jurisdiction information associated with a lien; requesting a determination as to whether the at least one lien has been released; displaying status information related to a lien; and requesting the

generation of at least one document as taught by MERS® Integration Handbook in order to aid in tracking liens by presenting a report of a subset of liens which are due for release or subject to penalty, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

As per Claim 24 and 31, Feinberg et al. discloses providing at least one user interface capable of accessing said server for requesting notification of a change in status information pertaining to at least one lien (Claim 7, via notifying required parties that a release has been filed).

As per Claim 25, Feinberg et al. discloses lien record information includes at least one of title information, recording information, indexing information, and financial information ([0013] vial recording number and recording date).

As per Claim 26, Feinberg et al. discloses the claimed invention as applied to Claim 23, above. Examiner takes Official Notice that it is old and well known in the art to provide a date of payment when providing documentation of a payment in order to aid in maintaining record of all payments received. For example, bills provide a date as to when a payment previously made was received. In addition, medical insurance settlement forms provide a date as to when funds were distributed to the medical provider.

As per Claim 27, Feinberg et al. discloses lien jurisdiction information ([0012] via guidelines are compiled from statutes, regulations, and local practice for each locale. Examiner asserts it would have been obvious to one of ordinary skill in the art at the

time the invention was made to have the guidelines include any statutory time limits in order to be compliance with the applicable statutes when creating liens and performing lien releases.).

As per Claim 28, Feinberg et al. discloses lien identification information includes at least one of an obligor, a lien holder, a loan amount, a payee identifier, and a lien jurisdiction ([0011] via liable party's identification (i.e. obligor)).

As per Claim 29, Feinberg et al. discloses the claimed invention as applied to Claim 23, above. However, Feinberg et al. fails to explicitly disclose lien status information including at least one of pending payment, awaiting statutory limit expiration, queued for search, searched by title searcher, awaiting search results, awaiting settlement agency release, pending demand, released and disbursement archived.

MERS® Integration Handbook teaches several different reports with the concept of lien status information including at least one of pending payment, awaiting statutory limit expiration, queued for search, searched by title searcher, awaiting search results, awaiting settlement agency release, pending demand, released and disbursement archived (MERS® Integration Handbook, Appendix D, Page 104 via Assignment and Lien Releases Report which discloses lien release statuses such as foreclosure pending (i.e. pending demand) and payoff (i.e. released)).

Therefore, from the teaching of MERS® Integration Handbook, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method and system for automated lien management of Feinberg to include lien status information including at least one of pending payment, awaiting statutory limit

expiration, queued for search, searched by title searcher, awaiting search results, awaiting settlement agency release, pending demand, released and disbursement archived as taught by MERS® Integration Handbook in order to aid in tracking liens by presenting a report of a subset of liens which are due for release or subject to penalty, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

(10) Response to Argument

Rejection of Independent Claims 1 and 10

As per Claims 1 and 10, the Appellant argues that Feinberg fails to disclose "identifying at least one real property-related lien where a note underlying the at least one lien has been satisfied, searching the lien records and determining from the lien records whether the at least one real property-related lien is due for release as a result of the note having been satisfied." Examiner respectfully disagrees. Examiner asserts Feinberg discloses identifying at least one real property-related lien where a note underlying the at least one lien has been satisfied ([0016] via receiving notice that payment has been received for a lien and preparing a release of the lien from the patient and insurance data previously transmitted and stored when the lien was originally prepared). Examiner asserts the lien is identified upon receiving the notice in order to prepare a release of the lien. Examiner asserts Feinberg discloses searching the lien records and determining from the lien records whether the at least one real property-related lien is due for release as a result of the note having been satisfied

([0016] via retrieving from the database (i.e. searching) patient and insurance data in regards to a lien that was filed and preparing a release based on the guidelines form each jurisdiction previously stored on the database.). Examiner asserts that a determination is made to release of receiving the notice of payment and retrieving the patient and insurance data, wherein upon the determination a release is prepared.

In response to Appellant's argument regarding Feinberg teaching away from the claimed invention, Examiner respectfully disagrees. Examiner asserts the prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed..." See *In re Fulton*, 391 F.3d 1195, 1202, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004).

Appellant argues that Feinberg fails to disclose "identifying whether at least one lien holder is subject to an action for non-release of a real property-related lien." Examiner respectfully disagrees. Examiner asserts ([0016] via retrieving from the database (i.e. searching) patient and insurance data in regards to a lien that was filed and preparing a release based on the guidelines form each jurisdiction previously stored on the database. Examiner asserts that it is implied that if the guidelines cannot be met then a release is not issued.) Examiner asserts Feinberg discloses the concept of requiring guidelines to be met in order to process documentation (via [0015] wherein it discloses that the guidelines have to be met in order for a lien to be filed). The release of a lien must meet the guidelines of the corresponding jurisdiction therefore, if the

guidelines cannot be met, a release of the lien cannot occur and an action of a non-release occurs.

Appellant argues that Feinberg fails to disclose "repeating steps (b) and (c) at given time intervals"; and "iteratively querying said lien records and performing said identification at given time intervals. Examiner respectfully disagrees. Examiner asserts Feinberg discloses the concept of repeating the steps of determining whether a lien is subject to release (via [0016] discloses the steps of determining a release of a lien to be repeated each time a notice of proper payment is received; wherein every time a lien holder has been paid, a release is filed.). Examiner asserts that Feinberg discloses iteratively querying said lien records and performing said identifications at given time intervals (via [0016] each time of lien holder has been paid, identifying the lien to be released and retrieving (i.e. searching) patient and insurance data from the database and guideline data for each corresponding jurisdiction).

Rejection of Dependent Claims 7 and 16

Appellant argues that Feinberg fails to disclose "providing real-time access to a plurality of lien record-keeping jurisdictions at substantially the same time." Examiner asserts real time is defined as "the actual time elapsed in the performance of a computation by a computer" by Dictionary.com, "real-time," in *Dictionary.com Unabridged*. Source location: Random House, Inc.
<http://dictionary.reference.com/browse/real-time>. Available:
<http://dictionary.reference.com>. Accessed: April 06, 2011. Examiner asserts Feinberg

discloses providing "real-time" access to a plurality of lien record-keeping jurisdictions at substantially the same time via providing access to guidelines from each jurisdiction that are stored in a database via [0016]. In response to appellant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., querying live, dynamic records) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Rejection of Independent Claims 19 and 21

As per Claims 19 and 21, Appellant argues that Feinberg fails to disclose "determining whether the at least one lien is due for release as a result of a note underlying the at least one lien having been satisfied." Examiner respectfully disagrees. Examiner asserts Feinberg discloses determining from the lien records whether the at least one real property-related lien is due for release as a result of the note having been satisfied ([0016] via retrieving from the database (i.e. searching) patient and insurance data in regards to a lien that was filed and preparing a release based on the guidelines from each jurisdiction previously stored on the database.). Examiner asserts that a determination is made to release of receiving the notice of payment and retrieving the patient and insurance data, wherein upon the determination a release is prepared.

Appellant argues that Feinberg fails to disclose "searching for said lien record" and "receiving search results associated with said lien record". Examiner respectfully

disagrees. Examiner asserts Feinberg discloses retrieving from the database (i.e. searching) patient and insurance data in regards to a lien that was filed and preparing a release based on the guidelines form each jurisdiction previously stored on the database via [0016].

Rejection of Dependent Claims 20 and 22

As per Claims 20 and 22, Appellant argues that Feinberg fails to disclose "initiating communications to determine whether said lien has been released to at least one of: a payoff lender, a settlement agent, a courthouse, a third party title insurance underwriter." Examiner respectfully disagrees. Examiner asserts Feinberg discloses providing communication in the form of a copy of the release to the liable party and patient via [0016]. Examiner asserts that upon the parties receiving a copy of the release it is determined that the lien has been released.

Rejection of Dependent Claims 23 and 30

As per Claims 23 and 30, Appellant argues that the Feinberg and MERS combination fails to disclose "providing at least one user interface capable of accessing said server...for requesting a determination as to whether the at least one real property-related lien has been released where a note underlying the at least one lien has been satisfied." Examiner respectfully disagrees. Examiner asserts Feinberg discloses providing at least one user interface ([0012; 0016] discloses providing at least one user interface). MERS discloses requesting a determination as to whether the at least one

real property-related lien has been released where a note underlying the at least one lien has been satisfied (via Page 12, discloses a user may request and receive a report via the MERS® OnLine browser application, wherein a report Lien Release Report may be generated (MERS® Integration Handbook, Appendix D, Page 104)). Examiner asserts that the rejection of Claims 23 and 30 does not contradict the position set forth in regards to Claims 1, 10, 19, 21. Examiner asserts Claims 1, 10, 19, and 21 fail to recite "**requesting** a determination as to whether the at least one real property-related lien has been released where a note underlying the at least one lien has been satisfied." Therefore, the rejections are not contradictory. Examiner also asserts that Claims 23 and 30 merely requires the user interface to be **capable of** accessing said server... for requesting a determination as to whether the at least one real property-related lien has been released where a note underlying the at least one lien has been satisfied." Examiner asserts that the user interface of Feinberg is fully capable of accessing said server... for requesting a determination as to whether the at least one real property-related lien has been released where a note underlying the at least one lien has been satisfied."

In response to Appellant's argument regarding MERS teaching away from the claimed invention, Examiner respectfully disagrees. Examiner asserts the prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed..." See *In re Fulton*, 391 F.3d 1195, 1202, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004).

Improper Consideration of Appellant Declaration under 37 CFR 1.132

In regards to Affidavit submitted June 9, 2010, Examiner asserts that the affidavit fails to clearly state that the declaration pertains to commercial success. Examiner asserts that the affidavit was directed to the claimed subject matter solving a problem that was long standing in the art wherein the affidavit addresses "reQuire" being the only company to provide a service, system, or method as claimed. As stated in the Final Office action dated August 03, 2010, Examiner asserts the Declaration under 37 CFR 1.132 filed June 09, 2010 is insufficient to overcome the rejection of claims 1-31 based upon the rejection under 35 U.S.C. 103(a) as being unpatentable over Feinberg et al. (US 2002/0107703) in view of MERS® Integration Handbook (Vol. II, Version 11.0, May 19, 2002) as set forth in the last Office action because: It states that the claimed subject matter solved a problem that was long standing in the art. However, there is no showing that others of ordinary skill in the art were working on the problem and if so, for how long. In addition, there is no evidence that if persons skilled in the art who were presumably working on the problem knew of the teachings of the above cited references, they would still be unable to solve the problem. See MPEP § 716.04.

As per the Affidavit submitted June 9, 2010 being direction to the commercial success of the claimed invention, Examiner asserts the Declaration under 37 CFR 1.132 filed June 09, 2010 is insufficient to overcome the rejection of claims 1-31 based upon the rejection under 35 U.S.C. 103(a) as being unpatentable over Feinberg et al. (US 2002/0107703) in view of MERS® Integration Handbook (Vol. II, Version 11.0, May 19, 2002) as set forth in the last Office action because: Applicant has failed to show

that the claimed features were responsible for the commercial success of an article in the evidence of nonobviousness. Examiner asserts an appellant must show that the claimed features were responsible for the commercial success of an article if the evidence of nonobviousness is to be accorded substantial weight. See *In re Huang*, 100 F.3d 135, 140, 40 USPQ2d 1685, 1690 (Fed. Cir. 1996); See also MPEP 716.03(a). Merely showing that there was commercial success of an article which embodied the invention is not sufficient. The affidavit states evidence of gross revenues. However, Examiner asserts that gross sales figures do not show commercial success absent evidence as to market share, *Cable Electric Products, Inc. v. Genmark, Inc.*, 770 F.2d 1015, 226 USPQ 881 (Fed. Cir. 1985), or as to the time period during which the product was sold, or as to what sales would normally be expected in the market, *Ex parte Standish*, 10 USPQ2d 1454 (Bd. Pat. App. & Inter. 1988). Examiner asserts the affidavit fails to provide evidence as to market share, or at to the time period during which the product was sold, or as to what sales would normally be expected in the market.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/FONYA LONG/

Examiner, Art Unit 3689

Conferees:

/Janice A. Mooneyham/

Supervisory Patent Examiner, Art Unit 3689

Vincent Millin /vm/

Appeals conference Specialist

